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SUBJECT: GUATEMALA: CONSTITUTIONAL COURT HAS BROAD IMPACT
ON GUATEMALAN SOCIETY

¶1. (SBU) Summary: Guatemala's Constitutional Court has a broad mandate to weigh in on political and social issues. The newly-elected court includes some notable legal scholars. The new court portends to be less partisan and more independent than previous courts. End Summary.

¶2. (U) The primary responsibility of Guatemala's Constitutional Court (CC) is to interpret the 1985 Constitution. Separate from the CC is the Guatemalan Supreme Court (CSJ), which supervises and administers the criminal and civil justice system. The president of the CSJ is considered the head of the judicial branch, but CSJ decisions are appealed to the CC, and vice versa, which sometimes makes it difficult to say who will have the last word on any given issue. The Constitutional Court is independent from other branches of government and is the ultimate arbiter of challenges to the constitutionality of laws. It has jurisdiction over legal challenges presented against the Guatemalan Congress, Supreme Court, or executive branch. Finally, the CC has the last word on international treaties and agreements. Much of its workload consists of hearing all appeals of court rulings on the much-abused injunctions ("amparos").

¶3. (U) The Court has five judges, each with an alternate, for a total of 10 justices, all of whom serve five year terms. Each judge and corresponding alternate is elected by different entity, namely the executive branch, Congress, Supreme Court, National University (University of San Carlos), and the Guatemalan Bar Association. Each entity has its own rules for selection of justices. On constitutional questions, decisions are reached by seven judges, usually the five principal judges and two more selected by random drawing from among the five alternate judges.

¶4. (U) The current justices assumed their positions in April 2006; this is the fifth court to be seated since it was established following the transition to democracy in 1985. The president of the current court is Alejandro Maldonado, one of Guatemala's most prominent and experienced politicians. Maldonado, the congressional nominee, has served as an ambassador overseas, as cabinet minister, and as congressman. The executive branch appointed widely respected constitutional expert (and former Solicitor General) Roberto Molina, while the Supreme Court nominated Gladys Chacon, the only woman justice. The University of San Carlos elected law professor Mario Perez and the Bar Association reconfirmed Justice Francisco Flores for a consecutive term as justice. Maldonado and Molina are well-known to the Embassy.

¶5. (SBU) The CC's broad mandate and the down-in-the-weeds details of the 70-page Constitution (which has over 280 articles, some of them with up to twenty subparagraphs) have allowed the Constitutional Court in recent years to weigh in on a broad range of policy issues ranging from taxation

authority and electricity rates to payments for former members of civil defense patrols. One of the areas that affects U.S. interests is extradition, where the Constitutional Court can be a venue for appeals and dilatory tactics. The court also has pending two challenges to CAFTA, presented by the national university and a coalition of NGOs.

The university's objection to CAFTA is procedural, alleging that the government should have submitted CAFTA to a referendum. The NGO challenge is substantive, alleging that CAFTA does not meet the government's constitutional obligation to pursue economic and trade policies advantageous to the Guatemalan people. The two challenges are considered to be specious, and neither is expected to prosper.

¶16. (SBU) The court is also available for consultation and review, even without a formal legal challenge. In August 2004, the court (at the government's request) issued an opinion that derailed a previous iteration of CICIACS, the GOG-UN agreement to create an international team to investigate clandestine criminal groups. As the court had interpreted several aspects of the CICIACS agreement to be unconstitutional, President Berger's advisors spent 18 months revising the draft. Believing that they have addressed the unconstitutionalities, Vice President Stein and Human Rights Commissioner Frank LaRue have said they intend to send the current version to the court for a new opinion, once they get the UN's agreement in principle.

¶17. (SBU) The Constitutional Court's most notable decision occurred in May 1993 when it ruled against then-President Serrano's attempt to stage a Fujimori-style "auto-coup." The court has issued several rulings on the presidential eligibility of former dictator Efrain Rios Montt, ruling him ineligible in 1990 and 1995 before deciding in 2003 that he was an eligible presidential candidate. The new court recently struck down a pension law for senior citizens. The

court has on its docket the politically sensitive challenge by former President Cerezo to the constitutional provision that forbids presidential reelection. A ruling in favor of Cerezo would also open the door to a bid by former president Alvaro Arzu, currently mayor of Guatemala City, who, according to some polls and analysts could defeat the other likely contenders.

¶18. (SBU) Comment: The Constitutional Court has earned a reputation of being staffed with partisan justices who make decisions based on political considerations rather than legal merit. The new court president (Maldonado) and at least two of his fellow justices (Molina and Flores) are viewed as strong constitutional experts who are less likely to bend to political influence.

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